

### **REMARKS**

Before entry of this Amendment, claims 1 – 5 were pending under examination in the Application. Applicant has carefully considered the Office Action of 02 March 2004, including the references cited within. The following is a brief summary of the Action:

Claims 1, 4 and 5 were rejected under 35 U.S.C. §102(e) as being anticipated by Odachowski (U.S. Patent No. 6,651,354). Claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Odachowski in view of in view of Knispel et al (U.S. Patent No. 5,210,956). Finally, claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Odachowski in view of Quenot (U.S. Patent No. 3,004,346).

The Office Action rejected claims 1, 4, and 5 under 35 U.S.C. §102(e) as being anticipated by Odachowski (U.S. Patent No. 6,651,354). Odachowski is cited as disclosing a measuring device having a housing; an opening disposed in the first end wall; and a tape with a terminal end having both an upper and lower flange and, further, the tape having graduated indicia along both its top side and bottom side wherein the indicia have an identical point of origin ongoing from the terminal end.

Applicants respectfully point out, however, that Odachowski's tape is not a prior invention by another according to 35 U.S.C. §102(e), as explained more fully in the following:

As evidenced by Applicants' design patent US D 443,215 S (filed 06 May 1999), the present invention was conceived and reduced to practice by Applicants prior to the tape measure disclosed and claimed by Odachowski (filed 01 Feb 2000). Although the Odachowski reference was prior filed (but not published) to Applicants' present utility application (filed 16 Nov 2001), Odachowski is not citable under 35 U.S.C. §102(e). Applicants will gladly furnish a 1.31 Declaration, if called upon to do so by the Examiner, as further support.

Accordingly, Applicants respectfully submit that pending claims 1, 4, and 5 are patentable under 35 U.S.C. §103(e) over Odachowski.

Claim 2 was rejected under 35 U.S.C. §103(a) as being unpatentable over Odachowski in view of in view of Knispel et al (U.S. Patent No. 5,210,956), while claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Odachowski in view of Quenot (U.S. Patent No, 3,004,346).

Applicant respectfully submits, however, that because dependent claims 2 and 3 serve to further limit and define independent claim 1 and claim 1 is patentable over the cited prior art for the reasons discussed above, dependent

claims 2 and 3 are also patentable under 35 U.S.C. §103(a) over Odachowski in view of Knispel et al (Claim 2) and in view of Quenot (Claim 3) respectively.

In summary, it is submitted that Applicant's claims presently in the Application are patentable over the prior art of record, and that the present Application is in condition for allowance. Accordingly, all claims of the application are now believed to be in a condition for allowance and favorable action is therefore respectfully requested.

The Examiner is invited to telephone the undersigned at her convenience, should any issues remain after consideration of the present Amendment, to permit early resolution of same. If any extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension.

Respectfully submitted,



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